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Date: 9 January 2002

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Number of Pages (including cover sheet): 5

Message/Note: Public Comment on the
proposed settlement of the antitrust
lawsuit against Microsoft Corporation.

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January 9, 2002

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To Whom It May Concern:

I am deeply disappointed by the proposed settlement of the antitrust lawsuit against Microsoft Corporation. It has been proven and upheld on appeal that Microsoft holds a monopoly in operating systems and that it has illegally maintained that monopoly in flagrant violation of the Sherman Antitrust Act. Despite this, the proposed settlement with Microsoft is a farce. It is weak, ineffectual, and does not address the best interests of consumers. Any settlement that would be truly just and beneficial to consumers should accomplish two things:

1. Microsoft should be denied the benefits of their lawbreaking.
2. Competition in the marketplace must be restored for the present and for the future.

The current settlement does nothing to punish Microsoft for its actions. This is not about revenge, merely common sense. Without punishment, Microsoft has no incentive to obey the law in the future. If Microsoft actually benefits from its lawlessness, what is to prevent them, or other corporations, from doing the same thing again?

The settlement needs to address this problem by: 1) requiring an admission of guilt from Microsoft, 2) imposing monetary fines on Microsoft, and 3) imposing other non-monetary punishments. Without these sorts of sanctions, Microsoft will surely continue its lawless behavior. Massachusetts Attorney

General Thomas F. Reilly commented on this settlement saying, "Five minutes after any agreement is signed with Microsoft, they'll be thinking of how to violate the agreement. They're predators. They crush their competition. They crush new ideas. They stifle innovation. That's what they do"¹. I have no doubt in my mind this is exactly what Microsoft will do if they are not punished.

For years, Microsoft has used its monopoly to block or inhibit middleware products that could potentially threaten the Windows monopoly. The current settlement agreement is an attempt to curtail many of these abusive tactics. However, the proposed remedies are full of loopholes meaning little, if any, real change will occur. Senator Patrick Leahy voiced his concern for the proposed settlement: "I find that many of the terms of the settlement are either confusingly vague, subject to manipulation or both. Second, I am concerned that the enforcement mechanism described in the proposed decree lacks the power and timeliness necessary to inspire confidence in its effectiveness"². Some of the dubious remedies that concern me are:

- The settlement attempts to give OEM's³ control of the middleware included on the computers they sell. However, several loopholes prevent real competition from resulting.
 - Microsoft is prohibited from non-monetary retaliation against OEM's who include non-Microsoft middleware. Monetary rewards for using Microsoft middleware, however, are allowed. With Microsoft's huge cash reserves, they could easily outspend their competitors, preventing them from gaining a significant hold on the desktop market.
 - The settlement only protects middleware made by third parties that competes with an existing Microsoft product. If you create a new product before Microsoft does, they can still exclude you from the desktop since Microsoft does not yet compete with you.
 - Additionally, middleware is only protected if the company distributed one million copies in the last year. This means that

¹Speech given by Matthew Szulik before the U. S. Senate, 12 December 2001

²The New York Times, 12 December 2001

³Original Equipment Manufacturer of personal computers

small, independent software developers (who are most in need of protection) do not get any.

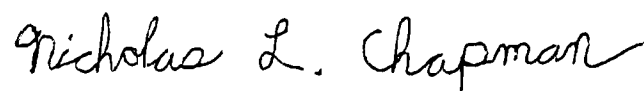
- Under the settlement, OEM's may change the default middleware application launched when a Microsoft alternative would normally run. However, if a particular requirement is not met by the alternative, the Microsoft middleware will still be launched. I can imagine Microsoft adding new features that require Microsoft's middleware to run properly. Sounds farfetched? Recently, Microsoft blocked many browsers made by third parties from accessing msn.com claiming these browsers could not provide the full user experience.
- Under the settlement Microsoft must disclose its API's⁴ to developers—provided developers have a reasonable need for them. Who gets to determine what is reasonable need? Microsoft. Even worse, if a developer actually uses Microsoft's API's, they must submit the program for approval by Microsoft. In effect, Microsoft gets free reign to use any innovation created by a third party developer.
- Microsoft does not have to release its own API's until the last beta stage on a product is reached. This gives Microsoft's developers a huge head start over third party developers, resulting in significant time-to-market advantages.
- Microsoft chooses, in part, the Technical Committee set up by the settlement to police Microsoft. As a result, the overall effectiveness of this committee is doubtful.

Competition is the cornerstone of the free market system. This competition drives innovation and productivity, while reducing costs to consumers. The goal of any settlement should be to restore competition in the software industry. The proposed settlement does not meet this goal. In 1994, the Justice Department entered into an agreement with Microsoft. It was the violation of this agreement that led to the current antitrust litigation in 1998. History tells us that Microsoft will violate this new decree, leading to future litigation. Senator Leahy worries about the same thing. "The serious questions that have been raised about the scope, enforceability and effectiveness of this proposed settlement leave me concerned that, if approved in its

⁴Application Programming Interfaces

current form, it may simply be an invitation for the next chapter of litigation"⁵. The government won the case. Microsoft used its monopoly power to crush competition and harm consumers. The government should press for a true settlement, not this ineffectual decree.

Sincerely,



Nicholas L. Chapman

⁵The New York Times, 12 December 2001